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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,769	08/10/1999	ERWIN HACKER	514413-3765	9638

20999 7590 05/15/2003

FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/371,769	Applicant(s) Hacker et al
Examiner Alton Pryor	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Feb 7, 2003

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 13-28 is/are pending in the application.

4a) Of the above, claim(s) 16, 17, and 19 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 13-15, 18, 20-22, 25, and 26 is/are rejected.

7) Claim(s) 23, 24, 27, and 28 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 17

6) Other:

Art Unit:

Claim Rejection under 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 13-15,18,20-22,25,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruegg (US 2001/0044382; 11/22/01). Ruegg teaches a herbicidal composition comprising an active ingredient. See abstract. Ruegg teaches that a number of other active ingredients including glufosinate-ammonium plus setoxydim can be added to the herbicidal composition in a synergistically effective amount. See column 5 line 60 - column 6 line 15. Ruegg teaches that a safener and adjuvants can be added to the herbicidal composition. See column 7 lines 4 - 40, column 13 lines 26-40. Ruegg teaches a method of applying the herbicidal composition to cotton plants to control weed growth. See column 13 lines 26-40. Ruegg does not teach an example wherein a composition or method comprises glufosinate-ammonium and setoxydim. However, it would have been obvious to one having ordinary skill in the art to develop the invention comprising the application of a composition comprising both glufosinate-ammonium and setoxydim. One would have been motivated to do this in order to effectively control weed growth in cotton.

Art Unit:

Claim Objection / Allowable Subject Matter

Claims 23,24,27,28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The elected invention comprising glufosinate-ammonium plus cycloxydim or pyrithibac is allowable. Applicant provides unexpected data for the instant invention comprising glufosinate-ammonium plus cycloxydim or pyrithibac. The examiner has extended search beyond the election. See rejection above.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


Alton Pryor
ALTON N. PRYOR
PRIMARY EXAMINER

Primary Examiner, AU 1616

5/14/03